

1/30/12 (2)

Christine Joyce

From: Stephen D. Anderson [SAnderson@AndersonKreiger.com]
Sent: Friday, January 27, 2012 10:04 AM
To: Steve Ledoux
Cc: Nina Pickering Cook; Christine Joyce
Subject: RE: Acton/GenSel - Rule of Necessity Motion for 1/30/12
Attachments: Short Form Motion for 1-30-12 to Invoke Rule of Necessity re Health Insurance (A0148310).DOC; Long Form Motion for 1-30-12 to Invoke Rule of Necessity re Health Insurance (A0148308-2).DOC

Steve:

I have attached alternative Rule of Necessity Motions for Monday 1/30/12, a Short Form and a Long Form. You only need to use one, not both.

The Long Form is the standard Motion we have been using, updated as to the date and adding a paragraph near the bottom of page 1 as to the update happening on 1/30/12.

The Short Form (OK – “short” is a relative term) incorporates by reference the 12/5/11 Motion and goes from there. If you use the Short Form, you should attach a copy of the signed, approved 12/5/11 Motion. Only the Short Form, not the attachment would need to be read at the BOS meeting.

Steve

From: Steve Ledoux [<mailto:sledoux@acton-ma.gov>]
Sent: Friday, January 27, 2012 9:00 AM
To: Stephen D. Anderson
Cc: Nina Pickering Cook; Christine Joyce
Subject:

Steve

Since we will be discussing the results of our informal health insurance progree with the BoS Monday night, I think we need some sort of generic motion for Rule of Necessity in the event the Board votes to accept or take some other action on the matter.

Thanks,

Steve

Steven L Ledoux
Town Manager
472 Main Street
Acton, MA 01720
Telephone (978) 929-6611

When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

Motion to Invoke Rule of Necessity Relative to Health Insurance
Informal Process, Chapter 69 Process, Chapter 69 Evaluation and Chapter 69 Vote
Board of Selectmen's Meeting
January 30, 2012

Whereas the Board incorporates by reference its recitations and motion invoking the Rule of Necessity as approved on December 5, 2011 (the "December 5, 2011 Motion"), regarding the Informal Process, Chapter 69 Vote, Chapter 69 Evaluation and Chapter 69 Process referenced therein.

Whereas at an open meeting on January 30, 2012, the Board desires to receive an update concerning the Informal Process referenced in the December 5, 2011 Motion and to deliberate concerning next steps.

Whereas the same conditions continue to apply for invoking the Rule of Necessity Relative to Health Insurance and the Informal Process, Chapter 69 Process, Chapter 69 Evaluation and Chapter 69 Vote as referenced in the December 5, 2011 Motion.

Whereas the Board shall attach a copy of the December 5, 2011 Motion to the permanent record of its vote on this Motion.

NOW THEREFORE, _____ moves that the Acton Board of Selectmen invoke the Rule of Necessity to allow Board members, who would otherwise be disqualified, to participate in the deliberation of and action on the Informal Process, Chapter 69 Vote, Chapter 69 Evaluation and Chapter 69 Process relative to changing health insurance benefits under M.G.L. c. 32B, §§ 21-23 and its implementing regulations or otherwise; and further moves that the Board's minutes shall reflect that the Board would otherwise lack a quorum to conduct such deliberations, take such action, take such vote, or engage in such process because of such disqualifications, and that the Rule of Necessity is being used to allow the Board to validly deliberate, act, vote and proceed with respect to these matters.

So Moved by Selectman _____

Seconded by Selectman _____

Record of Vote:

Selectman	Yes	No	Abstaining	Taking No Part
Mike Gowing				
Janet K. Adachi				
Pamela A. Harting-Barrat				
John Sonner				
David Clough				

The foregoing is an accurate record of the proceedings of the Acton Board of Selectmen on January 30, 2012.

Janet Adachi, Clerk

**Motion to Invoke Rule of Necessity Relative to
Chapter 69 Process, Chapter 69 Evaluation and Chapter 69 Vote**

**Board of Selectmen's Meeting
January 30, 2012**

Whereas Chapter 69 of the Acts of 2011 and the Regulations of the Executive Office for Administration and Finance, 801 CMR 52.00, establish a process to change health insurance benefits under M.G.L. c. 32B, §§ 21-23 (the "Chapter 69 Process").

Whereas, M.G.L. c. 32B, § 21(a) provides that, "Any political subdivision electing to change health insurance benefits under sections 22 or 23 shall do so in the following manner: ... in a town, by vote of the board of selectmen ..." (the "Chapter 69 Vote").

Whereas, M.G.L. c. 32B, § 21(b) provides that, "Prior to implementing any changes authorized under sections 22 or 23, the appropriate public authority shall evaluate its health insurance coverage and determine the savings that may be realized after the first 12 months of implementation of plan design changes or upon transfer of its subscribers to the commission" (the "Chapter 69 Evaluation").

Whereas, Chapter 69 does not give any board or authority, other than the Board of Selectmen ("Board") of the Town of Acton ("Town"), the legal authority to take the Chapter 69 Vote, conduct Chapter 69 Evaluation and/or engage in the Chapter 69 Process for the Town to change health insurance benefits under M.G.L. c. 32B, §§ 21-23 and its implementing regulations.

Whereas the preamble confirms that Chapter 69's purpose "is immediately to authorize municipalities to implement local health insurance changes" and Chapter 69 "is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience."

Whereas the Board is therefore legally required to act as soon as possible on whether the Town should elect to engage in the process to change health insurance benefits under M.G.L. c. 32B, §§ 21-23.

Whereas at an open meeting on November 21, 2011, the Board voted to engage in an informal process with Acton's public sector unions in an effort to address mutual concerns the parties have regarding group health insurance and the cost of delivering health insurance to the employees of the Town of Acton (the "Informal Process"), and based on the results of the Informal Process to determine at a meeting on February 6, 2012, whether to extend or conclude the Informal Process and whether or not to take the Chapter 69 Vote at that time.

Whereas at an open meeting on January 30, 2012, the Board desires to receive an update concerning the Informal Process and deliberate concerning next steps.

Whereas two Board members currently have no health or dental insurance benefits through the Town; however one Board member (Ms. Harting-Barrat) currently has dental insurance coverage through the Town; a second Board member (Mr. Sonner) has a spouse who is employed by the

Town as a teacher in the Acton public schools and who is a member of the teachers' union; and a third member of the Board (Mr. Clough) currently has health insurance coverage through the Acton-Boxborough Regional School District through his District-employed spouse, and the Town and the District are participating governmental units on health insurance matters under a Health Insurance Trust Agreement.

Whereas, three of the Board's five members therefore have actual or potential conflicts and are disqualified from participation in the Informal Process, the Chapter 69 Vote, Chapter 69 Evaluation and/or the Chapter 69 Process conducted by the Board on behalf of the Town; the Board lacks a quorum to act in a timely manner on the Informal Process, Chapter 69 Vote, the Chapter 69 Evaluation and the Chapter 69 Process; and the lack of a quorum is solely due to members being disqualified by conflicts as set forth above.

Whereas, in these circumstances, Town Counsel has advised that the Board invoke the Rule of Necessity relative to the Town's Informal Process, Chapter 69 Vote, Chapter 69 Evaluation and Chapter 69 Process, and such advice is consistent with the advice provided by the General Counsel of the State Ethics Commission to the General Counsel of the Executive Office for Administration and Finance dated September 2, 2011 on the same subject.

NOW THEREFORE, _____ moves that the Acton Board of Selectmen invoke the Rule of Necessity to allow Board members, who would otherwise be disqualified, to participate in the deliberation of and action on the Informal Process, Chapter 69 Vote, Chapter 69 Evaluation and Chapter 69 Process relative to changing health insurance benefits under M.G.L. c. 32B, §§ 21-23 and its implementing regulations or otherwise; and further moves that the Board's minutes shall reflect that the Board would otherwise lack a quorum to conduct such deliberations, take such action, take such vote, or engage in such process because of such disqualifications, and that the Rule of Necessity is being used to allow the Board to validly deliberate, act, vote and proceed with respect to these matters.

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